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PUBLIC SAFETY & SECURITY COMMITTEE

Raised H.B. 5408
AAC THE PRESENTATION OF A CARRY PERMIT

I urge this Committee to RETAIN the present language contained in Section 29-35, Section 1, Subsection (b) of the Connecticut General Statutes. All emphasis in the text below is mine.

Section 29-35, C.G.S. is the statute requiring pistol permits when carrying a firearm in public. Certain language was added to Subsection (b) during the 2015 legislative session pursuant to P.A. 15-216 as follows:

Sec. 29-35. Carrying of pistol or revolver without permit prohibited. Exceptions.
…
(b) The holder of a permit issued pursuant to section 29-28 shall carry such permit upon one's person while carrying such pistol or revolver. **Such holder shall present his or her permit upon the request of a law enforcement officer who has *reasonable suspicion of a crime* for purposes of verification of the validity of the permit or identification of the holder, provided such holder is carrying a pistol or revolver that is observed by such law enforcement officer.**

The issue arose when police were called to investigate a person carrying a firearm openly, or upon their personal observations. The initial language to require production of a permit was added at the request of police who found that the existing statute did not require persons to produce their permit at the request of an officer, and were offended when people objected. However, the initial language did not specify that an officer had to have reasonable suspicion of illegal activity prior to stopping a firearm owner and requesting his pistol permit. The reasonable suspicion requirement was added as a result of firearms owners' concerns that they would be stopped and detained by police for nothing more than carrying a firearm in the open, which is legal under Connecticut law. The

Connecticut State Police and other police departments have recognized that open carry is legal, and have published training bulletins to that effect.[1]

The present language must remain in the statute to comport with long standing United States Supreme Court rulings dealing with the Fourth and Fourteenth Amendments.[2] The seminal case addressing police officers stopping people in public is *Terry v. Ohio*,[3] which is still good law today. In *Terry*, the court addressed the police practice known as "stop and frisk" of suspicious person, distinguishing between an investigatory stop and an arrest. The court first observed that "No right is held more sacred, or is more carefully guarded, by the common law than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law."[4] They recognized that the Fourth Amendment protects people, not places, and wherever an individual may harbor a "reasonable expectation of privacy," he is entitled to be free from unreasonable governmental intrusion.[5] Further, the court stated that the Fourth Amendment governs "seizures" of the person, even when not under arrest, and whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person.[6] When a citizen is detained in public and possibly subjected to a body frisk, it is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.[7]

To stop and detain a person in public, an officer's action must be justified from its inception, and be based on more than inarticulate hunches or inchoate and unparticularized suspicion. Simple good faith on the officer's part is not enough.[8]

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[1] Connecticut State Police Training Bulletin #2013-01, page 1, "In Connecticut, there is NO state statute which makes it illegal for someone with a valid pistol permit to openly carry a pistol in plain view…". *See also*, Torrington Police Department Roll Call Training (09/2011) and Wethersfield Police Training Unit Bulletin (December 5, 2011).

[2] *U.S. Const., amend. IV*, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

U.S. Const., amend XIV, Section 1, in pertinent part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

[3] *Terry v. Ohio*, 392 U.S. 1 (1968)

[4] *Id.* at 9, citing *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891)

[5] *Ibid.*, *Terry* at 9, internal citations omitted.

[6] *Id.* at 11.

[7] *Id.* at 17.

[8] *Id.* at 26, 27.

The court's decision concludes that where a police officer observes unusual conduct which leads him to conclude in light of his experience that *criminal activity may be afoot*…he may stop the person and conduct a carefully limited search of the outer clothing…[9] Concurring in the opinion, Mr. Justice Harlan noted that a police officer's right to make an on-the-street "stop" is, of course, bounded by the protections of the Fourth and Fourteenth Amendments.[10] Mr. Justice White, in his concurring opinion, went further and noted that, while there is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets. Absent special circumstances, the person approached may not be detained or frisked, but may refuse to cooperate and go on his way. The person stopped is not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for an arrest.[11] Note that the "special circumstances" referred to by Mr. Justice White are indications that criminal activity may be taking place.

Other cases have cited and reinforced the *Terry* rule. In *Hiibel v. Sixth Judicial Court of Nevada, Humboldt County*[12], the court dealt with a "stop and identify" statute. Under Nevada's and other states' similar laws, police officers are permitted to stop a person *reasonably suspected* of committing a crime, and ask him questions regarding his identity, business, and where he is going.[13] To ensure that the resulting seizure is constitutionally reasonable, a *Terry* stop must be limited, justified at its inception, reasonably related in scope to the circumstances which justified the interference in the first place,[14] and cannot continue for an excessive period of time.[15] Under these principles, an officer may not arrest a suspect for failure to identify himself *if the request for identification is not reasonably related to the circumstances justifying the stop.*[16]

The U.S. Supreme Court further extended these principles to motor vehicle stops. In *Prouse v. Delaware*[17], the court dealt with the Fourth and Fourteenth Amendment implications of police stopping automobiles on a public highway to check license and registration when there was neither probable cause *nor reasonable suspicion* to believe any violations were occurring. The court noted that stopping an automobile and detaining its occupants constituted a "seizure" within the meaning of those Amendments, even though the purpose of the stop was limited and

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[9] *Id*. at 30.
[10] *Id*. at 31.
[11] *Id*. at 34.
[12] *Hiibel v. Sixth Judicial Court of Nevada, Humboldt County*, 542 U.S. 177 (2004)
[13] *Id*., pp. 4, 6
[14] *Id*. at 184, citing *United States v. Sharpe*, 470 U.S. 675, 682 (1985)
[15] *Id*. at 184, citing *United States v. Place*, 462 U.S. 696, 709 (1983)
[16] *Id*. at 187.
[17] *Prouse v. Delaware*, 440 U.S. 648 (1979)

the resulting detention quite brief.[18] In the case of motor vehicles, the court observed that the marginal contribution to roadway safety possibly resulting from a system of spot checks cannot justify subjecting every occupant of every vehicle on the roads to a seizure—limited in magnitude compared to other intrusions, but constitutionally cognizable—at the unbridled discretion of law enforcement officials. When there is not probable cause to believe that a driver is violating any one of the multitude of applicable traffic and equipment regulations—or other articulable basis amounting to *reasonable suspicion* that the driver is unlicensed or his vehicle unregistered—we cannot conceive of any legitimate basis upon which a patrolman could decide that stopping a particular driver for a spot check would be more productive than stopping any other driver. This kind of standardless and unconstrained discretion is the evil the Court has discerned… An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation. As *Terry v. Ohio, supra*, recognized, people are not shorn of all Fourth Amendment protection when they step from their homes onto the public sidewalks. Nor are they shorn of those interests when they step from the sidewalks into their automobiles. The court in *Prouse* finally held that, except in those situations in which there is at least *articulable and reasonable suspicion* that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.[19]

The same reasoning in all of the above cases applies to firearms as well. In Connecticut, whether a person possesses a concealed or openly carried firearm, a police officer is not constitutionally justified in detaining that person and demanding production of a pistol permit unless he has reasonable suspicion that the person is committing or about to commit a crime. Mere possession of a firearm is not enough to permit police intrusion into a citizen's privacy and subject him to detention, no matter how slight. As noted in *Prouse, supra*, there is no advantage to public safety and little chance in apprehending a person carrying a pistol without a permit by randomly stopping, or stopping each and every, person known or suspected of having a firearm in their possession. We can make the same comparison with non-firearms issues. The courts would find it equally distasteful if police were permitted to randomly stop people in public carrying a portable two-way radio, on suspicion that it was a commercial or amateur radio requiring a license. While the Federal

[18] *Id.* at 653, citing *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-558 (1976) and *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975)
[19] Id. at 661, 663.

Communications Commission requires an amateur radio operator to have a license[20], possessing such a radio without transmitting is legal, and a random intrusion by police to examine a person's FCC license would be unconstitutional, absent articulable suspicion that criminal activity was afoot.

Random police checks of home improvement contractors would be similarly struck down. Police officers randomly stopping people holding themselves out as home improvement contractors to check if they are licensed in Connecticut under Section 20-341(a), C.G.S.[21] would also be considered an illegal "seizure" under the Fourth and Fourteenth Amendments unless the officer could articulate what reasonable suspicion caused him to effect the initial stop, and how production of a contractor's license related to the suspicious activity.

It would be equally unconscionable if police were to randomly stop and require "papers" of people who were not suspected of criminal activity based merely on their appearance, because they may be in the country illegally.

The present law in Connecticut, Section 29-35(b), C.G.S., formally codifies the U.S. Supreme Court decisions over the years which require reasonable, articulable suspicion of criminal activity before a police officer my accost, question, and demand pistol permits from people known to be carrying a firearm. Legal firearms owners in Connecticut must continue to be afforded their full Constitutional protections. The present language must remain intact in the statute.

Sincerely,

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[20] 47 CFR 97, Subpart A, Section 97.5, "(a) The station apparatus must be under the physical control of a person named in an amateur station license grant…before the station may transmit on any amateur service frequency…". *See also* 47 U.S.C. Section 301, "No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio… within the jurisdiction of the United States, except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter."

[21] Section 20-341, C.G.S., subsection (a), "Any person who engages in or practices the work or occupation for which a license is required by this chapter without first having obtained an apprentice permit or a certificate and license for such work, …or who willfully and falsely pretends to qualify to engage in or practice such work or occupation…shall be guilty of a class B misdemeanor."